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MONTANA STATE

EXHIBIT NO. 5

AFL-CIO

BILL NO. SB 253

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January 28, 2009

Testimony of

Jim McGarvey, Executive Secretary, Montana State AFL-CIO
In Opposition to SB 253 – Tip Credit

Senate Business, Labor and Economic Affairs Committee

Joe Balyeat, Chair

Mr. Chairman, Members of the Committee; my name is Jim McGarvey. I am the Executive Secretary of the Montana State AFL-CIO. My testimony today is on behalf of more than 36,000 Montana union members and their families.

Tips are a gratuity given by a customer to a worker. Montana law states that tips are the property of the worker. By definition, employers owe wages to their workers for hours worked. Tips are not provided by the employer and could, therefore, NOT be considered a credit toward the employer's responsibility to pay wages as this bill would propose.

When discussing the issues of tipped employees we should be drafting legislation that provides protection and enforcement of wage loss, not inflicting further harm to the lower income families that struggle to make a living in this industry. Our time would be better spent writing legislation to protect worker's against improper workplace tip handling policies.

In Montana, too many workers are illegally required to submit their tips to the employer. In many such cases the employer redistributes the tips in the form of a check, a week or more after their collection. The check often reflects less than the originally collected tips because the tips have been 'split'. It's illegal to require employees to split tips with the employer and/or other workers yet it is so commonplace that these illegal policies are often posted on workplace bulletin boards in plain view.

In addition, many Montana workers are still having their tips withheld as payment for broken dishes and other expenditures that are natural occurrences of doing business – a cost responsibility which falls squarely on the employer and not the worker.

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We haven't achieved a culture in this industry where the tip laws are taken seriously and the tip income of workers is respected. This bill assumes that the tips being paid by customers are always making it into the hands of the worker they were intended to thank. This assumption is built on too many errors and uncertainties. Lost wages due to current tip mishandling is so vast it is equally immeasurable to quantify the potential losses incurred through a credited wage reduction proposed in this bill.

In addition, as a matter of principal union families are opposed to this regressive legislation that undercuts the vote of the vast majority of Montanans. In the 2006 election Montana voters ushered the Raise Montana initiative into law with an **astounding seventy three percent** support; winning an unprecedented majority in EVERY COUNTY IN OUR STATE.

Montana workers need a fair wage that can support a family. Almost two hundred and eighty six thousand Montana voters spoke loudly on election night in 2006 when they passed the current minimum wage law with the built-in annual cost of living adjustment for ALL MONTANA WORKERS. There were no exceptions.

I urge you to respect the wages of tipped employees and the voters of Montana by **opposing SB 253**.